IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

ST.Rev..No. 327 of 2005()

TA.599/2003 of KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH, KOTTAYAM
.....

PETITIONER/APPELLANT//ASSESSEE:

VENAD RUBBERS,
INDUSTRIAL ESTATE, CHANGANACHERRY.

BY ADV. SRI.JOHN RAMESH K.I.JOHN

RESPONDENT/RESPONDENT/REVENUE::

STATE OF KERALA,
REPRESENTED BY COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES SHRI V.V. ASOKAN.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 04/06/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

.....

SALES TAX REVISION PETITION No. 327 OF 2005

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Dated this the 4th June, 2007

O R D E R

H.L. Dattu, C.J.:

This Revision Petition arises under the provisions of the Kerala General Sales Tax Act ('Act' for short). In this Revision Petition, we are concerned with the assessment year 1997-98.

2. The petitioner purchases old worn tyres and tyre wastes, tread waste etc . After powdering them, he sells it to industrial units , which are rubber based industries for use in the production of the finished products.

3. The assessee had filed its annual returns before the assessing authority claiming concessional rate of tax at the rate of 2.5%. The claim was rejected by the assessing authority and he had treated the sales effected by the assessee as a rubber product falling under Entry 112 of the First Schedule of the Act and liable to tax at the rate of 10%. Aggrieved by the findings and conclusions reached by the assessing authority, the assessee had carried the matter by way of first appeal before the first appellate authority, who by his order dated 15.11.2003, treated the items sold by the assessee as an item falling under residuary clause in the first schedule and held that the assessee is liable to pay tax at the rate of 10%.

4. Aggrieved by the above said two orders, the assessee was before the

Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal. Before the Tribunal, the assessee had relied upon the notification issued by the State Government in exercise of its powers under section 10 of Act and also the certificate issued by the industrial units .

5. The Tribunal has rejected the claim of the assessee and while doing so has observed as under:

> *"9. Serial No.21 of the Schedule of SRO 1541/93 is ' Reclaimed Rubber'. The item sold by the appellant is Tyre waste powder which does not find a place in any of the entries in the Schedule attached to SRO 1541/93. Hence the claim of concessional rate is not allowable in this case*."

6. The assessee is questioning the legality or otherwise of the order passed by the Tribunal in T.A. 599 of 2003 dated 27th February 2004 in this Revision Petition , filed under section 41 of the Act, being aggrieved by the same.

7. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> *"i) Whether on facts and circumstances of the case the Tribunal was justified in not considering and adjudicating the issue of concessional rate of tax under section 5(3) of the KGST Act available to the petitioner based on form 18 declarations produced before the Tribunal.*
>
> *ii) Whether on the facts and circumstances of the case, the*

Tribunal was justified in denying the claim of concessional rate of tax @ 2.5% based on SRO 1541/93 by holding that tyre waste powder sold by the appellant is not reclaimed rubber coming under item 21 of the schedule to SRO 1541/93. "

8. Before the assessing authority, though the assessee had claimed concessional rate of tax at the rate of 2.5%, on the sales effected by him to the industrial units, he had not produced SRO. 1541/93 and also the certificate issued by the industrial units . It is for the first time, before the Tribunal the assessee had produced the notification issued by the State Government and also the certificate issued by the industrial units.

9. Learned counsel appearing for the assessee would submit that the assessee purchases old worn tyres and tyre wastes and powders them and sells it as a raw material to the industrial units, which uses the tyre powder for the manufacture of their finished products. Therefore, according to the counsel, the sale of goods effected by him would fall under item No.21 of the SRO 1541/93.

10. At this stage, it is useful to refer to the SRO 1541/93 issued by the State Government , in exercise of its powers under section 10 of the Act. The said notification reads as under:

"S.R.O. 1541/93: In exercise of the powers conferred by

Section 10 of the Kerala General Sales Tax Act 1963 (Act 15 of 1963) and in suppression of Notification No. G.O.(P) 95/93/TD dated the 31st May, 1993 published as S.R.O.No.896/93 in the Kerala Gazette Extraordinary No.634 dated the 11th June, 1993 , the Government of Kerala having considered it necessary in the public interest so to do, hereby makes reduction in the rate of tax payable under the said Act by a dealer on the sale of the chemicals and other raw materials specified in the schedule below to industrial units for use in the manufacture of rubber products/rubber goods or compounded rubber or masticated rubber within the State to 2.5 % subject to the production of a certificate in the form appended to this notification.

SCHEDULE

1. *Accelarator.*
2. *Aluminium silicate*
3. *Ammonium Hydroxide*

xx xx xx xx xx xx xx xx

21. *Reclaimed Rubber*

xx xx xx xx xx xx xx xx xx ”

11. Shri V. V. Asokan, learned Special Government Pleader for Taxes would submit that what is sold by the assesseee, by no stretch of imagination can be construed as a reclaimed rubber and therefore, the assessee is not entitled for the benefit under the notification/SRO. Learned Government Pleader further

submits that the exemption notification requires to be strictly construed by this court. The one and the only question that would arise for our consideration and decision is, whether the sale of rubber powder by the assessee to the industrial units for the manufacture of their finished products/rubber products is eligible and entitled for exemption under the notification issued by the State Government by SRO 1541 of 1993.

12. The admitted facts are :

The assessee purchases old worn tyres and tyre wastes and powders them and what is sold by him is a rubber powder to the industrial units . The rubber powder thus sold by the assessee is used by the industrial units as raw material for the manufacture of rubber products such as rubber mats, coir mats, automotive tyres, tubes, flaps , door mats etc.

13. The notification issued by the State Government clearly envisages that a dealer under the Act is eligible for concessional rate of tax at the concessional rate of 2.5% , if the sale effected by him is a raw material or chemical to an industrial unit for use in the manufacture of rubber products/rubber goods or compounded rubber or masticated rubber .

14. According to the assessee, he purchases old worn tyres and tyre wastes and powders them and it is sold as rubber powder . The expression 'reclaimed rubber' is one of the raw material which is eligible for exemption under the

notification. Therefore the dictionary meaning of the word is taken for the purpose of understanding and interpreting the word 'reclaimed' . The word 'reclaim ' in Collins Dictionary is defined as under:

> *" 1. To convert (desert, marsh, waste ground etc.) into land suitable for growing crops (2). To recover (useful substances) from waste products."*

Other meanings attached to the word need not be referred to by us in the instant case. It is the specific case of the assessee that he would purchase old worn tyres and tyre wastes and after certain process, he would recover useful substance called rubber powder . This rubber powder is sold to the industrial units as a raw material and the industrial units would use this raw material for the purpose of manufacture of finished products like door mats, rubber mats etc.

15. The assessee has also produced the certificate issued by the industrial units , wherein they have stated that the raw material purchased from the assessee is used in the manufacture of finished products such as door mats, rubber mats, tyre flaps etc. There is no reason to disbelieve the certificate issued by the industrial units . That only means that what is sold by the assessee is used by the industrial units for the manufacture of finished products and that they have used the raw material so sold by the assessee for that purpose.

16. In view of the above, in our opinion, the case of the assessee would squarely fall within the notification issued by the State Government SRO 1541/93

and therefore, he is eligible and entitled for concessional rate of tax at the rate of 2.5% . In that view of the matter, the question of law raised in the Revision Petition requires to be answered in favour of the assesseee. Accordingly the following:

O R D E R

i) Revision Petition is allowed.

ii) The orders of the Tribunal in T.A. 599 of 2003 is set aside. The assessing authority is now directed to re-quantify the tax payable by the assessee by applying the notification issued by the State Government SRO 1541/93.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK